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AUG 23 2006

**OFFICE OF PETITIONS**

In re Application of Kinzer :  
Application No. 09/292,186 : Decision on Petition  
Filing Date: April 15, 1999 :  
Attorney Docket No. IR-1609 (2-1941) :

This is a decision on the petition under 37 CFR 1.181, filed October 14, 2005, to withdraw the holding of abandonment.

The petition is **granted**.

The Notice of Abandonment mailed September 15, 2005, is hereby withdrawn and vacated.

Facts:

On September 27, 2004, the Board of Patent Appeals and Interferences rendered a decision affirming the non-final rejection of all pending claims.

A Request for Rehearing was timely filed on November 29, 2004.

On August 17, 2005, the Board rendered a decision affirming the September 27, 2004 decision.

A Notice of Abandonment was mailed September 15, 2005. The Notice of Abandonment stated the application was abandoned "because the period for seeking court review of the decision has expired and there are no allowed claimed."

Discussion:

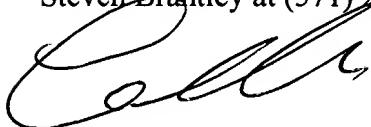
37 CFR 1.304(a)(1) states in part,

If a request for rehearing or reconsideration of the decision is filed, ... the time for filing an appeal or commencing a civil action shall expire two months after action on the request.

The action on the Request for Rehearing was the decision issued August 17, 2005. Petitioner had until October 17, 2005, to file a proper paper to avoid termination of proceedings. Therefore, the Notice of Abandonment mailed September 15, 2005, was improper and is vacated.

Technology Center Art Unit 2811 will be informed of the instant decision. The October 17, 2005, petition to reopen prosecution pursuant to 37 CFR 1.198 will be considered by the Technology Center in due course.<sup>1</sup>

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

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<sup>1</sup> Petitions under 37 CFR 1.198 to reopen or reconsider prosecution of a case after decision by the Board, where no court action has been filed, are decided by the Technology Center Director, MPEP § 1002.02(c).